

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

PHILMAR DAIRY, LLC, ARCH
DIAMOND, LLC, MOONSTONE
DAIRY, LLC, and HENDRIKA DAIRY,
LLC,

Plaintiffs/Counter-Defendants,

v.

No. 2:18-cv-00530-SMV-KRS

ARMSTRONG FARMS and RANDY
ARMSTRONG,

Defendants/Counterclaimants.

**ORDER GRANTING PLAINTIFFS' MOTION TO EXTEND
TIME TO FILE MOTION TO COMPEL**

THIS MATTER comes before the Court on Plaintiffs' opposed motion to extend the deadline to file a motion to compel. (Doc. 28). Defendants oppose on the grounds that Plaintiffs filed this motion after the underlying deadline for moving to compel had already expired. Under the Court's Local Rules, a party "served with the objections to [written discovery] must [file a motion to compel] within twenty-one days of service of the objection[.]" D.N.M.LR-Civ 26.6. If the aggrieved party does not move within that time or seek an extension of time, the party's failure "constitutes acceptance of the objection." *Id.* The Court may, for good cause, change the twenty-one day period. *See id.* And the Court need not enforce the Local Rules to avoid injustice. *See* D.N.M.LR-Civ. 1.7

In this case, Plaintiffs were served with objections on September 10, 2018 when Defendants tendered the CD containing the requested document files. Plaintiffs did not move to extend the deadline to file a motion to compel until November 16, 2018, more than month after the October 1, 2018 deadline expired. While counsel should be mindful of and comply with the

requirements of the Local Rules, the Court nonetheless exercises its discretion to permit the untimely motion and waive application of the Local Rule. There has been no showing of bad faith or dilatory purpose on behalf of Plaintiffs. With the close of discovery several months away and trial not yet scheduled, the Court cannot discern any appreciable prejudice under the circumstances. The matter should therefore be decided on the merits rather than on a technical violation of the rule concerning the time to file the motion.

IT IS, THEREFORE, ORDERED that Plaintiffs' motion to extend time (Doc. 28) is **GRANTED**. Plaintiffs are permitted to file their motion to compel on or before November 26, 2018.

A handwritten signature in dark ink, appearing to read "Kevin Sweazea", is written over a horizontal line.

KEVIN R. SWEAZE
UNITED STATES MAGISTRATE JUDGE